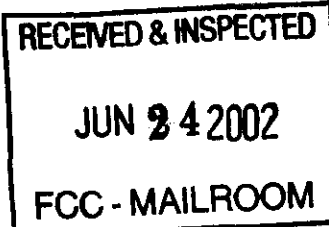


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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	Cf. FM Rulemaking
Informal Complaint of)	MM. Docket No. 99-331
Sandlin Broadcasting Co. Inc.)	
v.)	
Garwood Broadcasting Company and)	DOCKET FILE COPY ORIGINAL
Roy E. Henderson, Its Principal)	

To: Chief, Enforcement Bureau
Office of the Bureau Chief

REPLY TO INFORMAL COMPLAINT

On February 15, 2002, a pleading entitled "Comments" was filed by Sandlin Broadcasting Company, Inc (hereinafter "Sandlin") in MM Docket No 99-331, an FM allocation rulemaking proceeding considering a rulemaking proposal by Garwood Broadcasting Company of Texas (hereinafter "Garwood"). The Comments by Sandlin were filed in response to an Amendment filed by Garwood on January 11, 2002, but were filed 22 days late (with no request for acceptance or rule waiver) and including a false Certification of having been filed and mailed to Garwood as of February 13, 2002, whereas an official U.S. Post Office stamp proved they were not actually mailed until two days thereafter, on February 15, 2002. These infirmities, among others, were pointed out to the Policy and Rules Division of the FCC in subsequent pleadings and later admitted by Sandlin although without explanation. See Garwood "Reply to Comments" filed February 27, 2002; a further unauthorized "Letter" pleading by Sandlin on March 4, 2002; Garwood's "Motion to Strike" that

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unauthorized pleading on March 27, 2002; Sandlin's Opposition on April 3, 2002; and Garwood's Reply on April 12, 2002.

All of these pleading were directed to the Allocations Branch of the Policy and Rules Division of the Mass Media bureau (now the Audio Division, Office of Broadcast License Policy of the Media Bureau) to be considered within Docket 99-331. The instant separate pleading submitted herewith to the Enforcement Bureau is necessitated by Sandlin's decision to also submit its arguments separately to the Enforcement Bureau in a pleading styled by Sandlin an "Informal Complaint" against Garwood and Roy E. Henderson, its principal, a copy of which was included as an Exhibit in Sandlin's Comments filed in MM Docket 99-331 on February 15, 2002, (but not otherwise served upon counsel for Garwood). 1/ Although Sandlin has made the same arguments, repeatedly, to the Office of Broadcast License Policy in Docket 99-331, a part of the Agency fully competent to act upon such charges, had they any merit, it has now decided to repeat that same baseless invective here to the Enforcement Bureau. Having decided to inflict its relentless screed upon yet another arm of the Agency, we feel compelled to respond here, for the record.

**I. SANDLIN'S PAST HISTORY OF "WAREHOUSING" CHANNEL 273C1
IS RELEVANT TO CONSIDERATION OF ITS COMPLAINT.**

It must be wondered at the outset, what could possibly have motivated Sandlin to file such a vicious, ad hominem attack upon

1/ It is noted that the Informal Complaint was also dated February 13, 2002, and there is substantial reason to believe that it too was misdated and not actually mailed by Sandlin until two days later.

Garwood, and Roy E. Henderson, its principal. 2/ Is it really just a disagreement upon a proposed rulemaking proposal or is there something else? If you surmised the existence of "something else" you would be right in doing so. There is a certain history to consider here and one that would seem to be most relevant in considering Sandlin's actions.

A. The Short Explanation of Sandlin's True Motivation

The short version is this: "I don't want it but no one else can have it. I may never ride that pretty little red bike that has been lying in the dust heap for ten years but I will fight any one else being able to use it". As disagreeable as such an approach might be, Sandlin could probably get away with it if it were really just a "little red bike" but what we are dealing with here is FM channel 273C1 which Sandlin requested from the FCC in early 1991, received in November of 1991, but then, contrary to its specific (and as it turns out, false) representations to the Commission in requesting the channel, never built, being content to simply "warehouse" the channel, sitting upon it unused for over the next ten years. In MM Docket 99-331 Garwood has now proposed actually using the channel (and replacing the existing operating channel of Sandlin's KMKS in Bay City, Texas, from 273C2 to equivalent channel 259C2) and Sandlin is quite clearly "outraged" that anyone else would actually propose using channel 273C1. It's as simple as that.

2/ It is noted here that for convenience of the reader, and to avoid needless duplication, references here to "Garwood" also include Roy E. Henderson, principal of Garwood.

B. The Detailed Explanation of Sandlin's Desperate
Opposition to Reallocation and Use of Channel 273C1

1. Against All FCC Policy and Contrary to The
Public Interest, Sandlin Has "Warehoused"
Channel 273C1 For Ten Years

The longer version is this: Sandlin presently operates radio station KMKS(FM) on channel 273C2 in Bay City, Texas. It has operated on this channel class for approximately 15 years, since 1986 when its channel was upgraded and changed (with its consent and approval) from 227A to 273C2. Thereafter, in 1991, Sandlin filed a Petition for Rulemaking (MM Docket 91-242) requesting that the channel be further upgraded to 273C1, and that its license for KMKS be modified accordingly, it being specifically represented to the FCC at that time for the FCC's reliance, as a required condition for consideration and grant of the rulemaking request 3/ that, upon FCC approval, Sandlin would implement it.

Fully relying upon that specific representation and commitment by Sandlin, the FCC on November 7, 1991, issued a Report and Order in Docket 91-242 (DA-1412, copy attached hereto as Exhibit A) granting Sandlin's request, upgrading the channel to 273C1, modifying the license of KMKS to operate on that channel, and directing Sandlin to file the requisite "perfecting" application form 301 to reflect the new authorized operation.

In response to the FCC's favorable action, Sandlin subsequently filed a form 301 that did not meet the most basic of

3/ Absent such a specific commitment, the FCC will absolutely NOT consider, let alone, grant, such a rulemaking proposal. See e.g. Murray, Kentucky, 3 FCC Rcd 3016 (1988) and Pine, Arkansas, 3 FCC Rcd 1010 (1988).

applicable rules of the Commission. Finding that it did not meet the rules, the FCC returned that application as defective and unacceptable for filing (FCC Letter to Sandlin August 12, 1992, copy attached hereto as Exhibit B)

Subsequently, Sandlin filed another application for operation of channel 273C1 and this time it was granted (Construction Permit issued May 12, 1993, copy attached hereto as Exhibit C).

From that point on, Sandlin simply "sat" upon the upgraded channel. It did not build it as promised and as authorized in its construction permit of may 12, 1993, nor did it bother to request any extension of that permit. It simply sat on it and did nothing. Such being the case, the FCC, by Letter dated January 12, 1995 (copy attached hereto as Exhibit D) recognized Sandlin's actions, or rather the lack thereof, and canceled the construction permit.

It is as obvious as it is reprehensible that Sandlin couldn't care less. It made no response to the FCC's Letter of Cancellation, requested no reconsideration, and offered no explanation. It just didn't care.

2. During All Of This Time, When Sandlin Was Free to Apply For its own Use of Channel 273C1, Garwood Never Opposed Such Use by Sandlin in any way, But Sandlin Continued to Choose to Simply "Warehouse" and Waste the Channel for a period of Ten Years.

And during all this time, Garwood never opposed Sandlin on anything, in any way, never filed any Opposition or alternate proposal for channel 273C1, never "harassed" Sandlin in any way. Sandlin was at all times free to do all that it wanted to do and it did nothing.

Nothing, that is, except to waste the time and resources of the FCC in requesting an allocation that it never chose to implement, wasting use of that channel 273C1 for over ten years time, depriving the public or any other party in providing further service with that channel, choosing instead to simply sit on it, to simply "warehouse" it for its own convenience for a period of over ten years.

Even after its construction permit for operation on channel 273C1 lapsed and was canceled by the FCC (in January of 1995), Sandlin sat for year after year upon that channel until finally, in 1999, Henderson decided to file a rulemaking proposal that would make full use of the unused channel. Although the Petition filed by Fort Bend Broadcasting in April of 1999 was returned on May 12, 1999 for a "short-spacing" problem, a new proposal by Garwood, fully consistent with all FCC rules was subsequently filed on January 10, 2000. This proposal was accepted by the Commission in Docket 99-331, with a Public Notice (Report No. 2402) issued on April 11, 2000, and proposed inter alia, using

channel 273 at Columbus, Texas, and substituting equivalent channel 259C2 to replace 273C2 in use at the operation of KMKS at Bay City.

3. Sandlin Has Attacked Garwood/Henderson For the
Sole Reason That Garwood has Proposed Actual Use
of the Long-Dormant Channel 273C1.

Thereupon we find the cardinal sin of Henderson's actions: he dared to propose an actual use of channel 273C1. Despite the fact that Sandlin had been fully content to simply warehouse that channel for over ten years, once Garwood proposed a use for it which would actually put it in service to the public, Sandlin was simply outraged, How dare anyone to propose the use of that channel. Why, Sandlin had "owned" that channel for over 10 years. and just because Sandlin never chose to "use" it didn't mean that it didn't still want to keep it for its own pleasure and convenience...someday...maybe...if it ever felt like it.

If we were dealing with an unused little red bike here, perhaps Sandlin could get away with such a petulant, juvenile behavior. But this is not a little red bike, it is an FM channel owned by the people of this country and dedicated to their use, not Sandlin's private storehouse.

The fact is that since requesting and receiving the allocation of channel 273C1 in 1991, Sandlin has been more than happy and content to let the channel it requested so long ago simply lie fallow, wasted, and unused, a wide-area broadcast service that Sandlin requested, reserved and ignored, much to the detriment of the public interest in having such a service. When

Henderson showed an interest in using that channel after it had sat unused for over ten years by Sandlin, Sandlin has opposed that use.

Having exhibited no prior interest in use of channel 273C1, having let its construction permit for use of that channel simply expire unused, and having been more than content to simply "warehouse" that channel unused and unusable by anyone else for over ten years, Sandlin's reaction to the proposed use by Garwood has been as shrill as it has been devoid of logic and reason. It seems there is nothing that Sandlin will not say, no charge too outrageous for it to make in its last-ditch fight to block use of channel 273C1 by Garwood.

Sandlin's reaction of the classic spoiled child, exhibiting endless tears and tantrums because someone else now wants to use its "toy" will not prevail in the real world of grown-ups. This is not the playground, this is not a little red bike and most importantly, it does not "belong" to Sandlin. Sandlin had its chance to use channel 273C1 and did not. It is now far too late in the game for Sandlin to try to deprive use of that channel by someone else. In any case, we believe that the Broadcast License Policy Branch is in the best position to understand what Sandlin has done here, all the charges it has made in its relentless efforts to block use of this channel as proposed in Docket 99-331, and how best to respond. Having said that, we will just note a few further things for the record here.

II. RESPONSE TO SANDLIN'S MOST OUTRAGEOUS AND UNTRUE ATTACKS

A. Sandlin's General Approach of Vicious Unsupported Attack

First of all, in addition to the current round of pleadings filed by Sandlin as referred to above, it has also filed other pleadings in response to the proposal filed by Garwood on January 10, 2000. These included its Reply Comments dated January 21, 2000, as well as its pleading styled as a "Petition to Deny" filed April 25, 2000. 4/ It has in fact already burdened the record in Docket 99-331 with its arguments, already endlessly repeated as "exhibits" in subsequent pleadings, as if repetition would act as a substitute for substance. It has now expanded its reach to its filing with the Enforcement Division.

In its Informal Complaint, as in its other pleadings Sandlin ties its own "spin" on this and other FCC rulemaking proceedings as bad or ungrantable for reasons apparently known only to Sandlin, good and sufficient to Sandlin, and tied together at various junctions with ubiquitous phrases such as "I surmise", and "I believe", and when Sandlin's position is so convenient. If any proposal is not favorable to Sandlin, it simply then cannot be considered "bona fide". Why? Because Sandlin says so, and "surmises" so, and "believes" so. And if all else fails, then we are regaled with Sandlin's favorite: "gaming", whatever that is.

4/ It is noted here that Sandlin's "Petition to Deny" could not be considered as such under FCC Rules since there was no application pending then (or now) to "deny".

B. Henderson's Positive Record Vs. Sandlin's Patent Abuse of Process in Obtaining and Warehousing Channel 273C1

Just for the record, whatever rulemaking proposals have been filed by Henderson or any company in which he is a principal, have stood on their own before the Commission. Each has been supported by professional engineering analyses, demonstrating compliance with FCC Rules, and each has included the full commitment of the proponent to implementation of the requested proposal, full and complete and without reservation.

Perhaps we should compare this positive track record with Sandlin's own, requesting a channel, receiving the requested channel, receiving a construction permit, ignoring the construction permit, wasting the channel allocated by the FCC for over ten years for whatever reasons were good and sufficient to Sandlin. Use of the Commission's rulemaking process to simply "lock up" a channel for ten years to deprive its use in public service anywhere else by anyone else might be good way for Sandlin to "keep out the competition" but would also seem to clearly "subvert the underlying intended purpose" of the FM rulemaking process (greater and expanded service to the public) and to meet the definition of abuse of process as set forth in Silver Star Communications-Albany, Inc, 3 FCC Rcd 6342 (1988).

C. The Record Establishes Beyond Any Doubt That Sandlin's Allegation That Henderson had "Harassed" Sandlin to Sell its Station Are Utterly Untrue.

Sandlin also accuses Henderson of somehow chasing after Sandlin to try to buy the station, the reluctant bride being pursued by Snidely Whiplash. How convenient and how untrue.

Henderson will freely admit that he spoke to Sandlin about possible sale of the station back in late 1989/early 1990. That is over ten years ago. The next contact by Henderson was not even with Sandlin but with a broker in late 1999, that's ten years later. The broker spoke with Sandlin and it got as far as a draft letter of Intent dated February 10, 2000, but never agreed to or executed by the parties. That's a total of 2 contacts, separated by ten years, with the second contact being through a media broker. Note also that during this entire period Henderson had never opposed any of Sandlin's rulemaking petitions or construction permits proposing use of the channel. Sandlin had a free ride for about ten years and that is far more than Sandlin deserved. If Sandlin felt "intimidated" by those two isolated contacts, then Sandlin is in the wrong business.

**D. Sandlin's Engineering Arguments And Conclusions
Are Baseless, Incompetent, and Untrue.**

On pages 4,5, and 6 of Sandlin's pleading it argues the engineering sufficiency of various stations and other rulemaking proceedings. We can only say that as a member of the public Sandlin could have argued such "deficiencies" as it saw in any of those proceedings, which would be the proper forum to do so. Listing its blunderbuss charges here is no substitute for raising any valid concern in the forum in which it was being considered at the time it was being considered. Moreover, to the extent that Sandlin weighs in on various engineering conclusions here we have to note the absence of any indication of Sandlin's technical background, qualifications, or competence to make such pronouncements, nor the submission of any technical analyses with

which to support its utterly unfounded conclusions and charges. On the other hand, we are attaching hereto our own technical exhibit as prepared by Fred W. Hannel, a professional Broadcast Engineer, holding a Masters Degree in Electrical Engineering, who has his own comments to add as to Sandlin's technical charges.

E. Sandlin's Argument As To Service Of Pleadings In
Another Proceeding Are As Irrelevant as They Are Wrong.

We note that on page 8 of its pleading Sandlin complains as to the service of a pleading in another case in which Sandlin had submitted numerous "letters" of support of its position. It appears that copies of the responsive pleading were served to the letter writers as well as other parties to the proceeding. Sandlin complains bitterly about that service. Have we missed something here? We have heard of people complaining that they have NOT been served but have never heard of anything like Sandlin's complaint.

If the people were interested enough to join the proceeding in the first place with their letters on Sandlin's behalf, why would they not be interested in the other side of the argument as might be found in the responsive pleading? Or is it Sandlin's position that Sandlin would like to just "protect" them from seeing the other side of the argument? That is ludicrous. These are all public proceedings and public documents and it would seem to be in the PUBLIC'S interest to have both sides of the argument as widely available as possible. In any event, claiming that someone served "too many" parties with a public pleading is absurd.

III. CONCLUSION: SANDLIN ABUSED THE FCC PROCESSES IN REQUESTING THE CHANNEL 273C1 UPGRADE IN 1991, MISREPRESENTED ITS INTENTIONS TO USE THAT CHANNEL, AND HAS SINCE SIMPLY WAREHOUSED THE CHANNEL FOR A PERIOD OF TEN YEARS. ITS PRESENT ATTACKS UPON GARWOOD FOR PROPOSING AN ACTUAL USE OF THAT CHANNEL ARE NOT ONLY BASELESS BUT SIMPLY COMPOUND SANDLIN'S OWN SORRY PAST RECORD OF ABUSE OF PROCESS RELATIVE TO THIS MATTER.

Sandlin is unhappy that someone - anyone - else has asked the FCC for use of a channel that Sandlin has warehoused, unused, for over ten years. In response Sandlin has lashed out, not with facts or logic, but with invective and baseless accusations, all designed to try to block anyone else from use of the channel. In any event, Sandlin has had its say, and more, in a series of pleadings filed in Docket 99-331, as well as other places. It has thrown every charge imaginable up against the wall hoping that something will stick. It is not a new tactic, just a disgusting and reprehensible one. In any event, it has said all that it could say and we suggest that the Office of Broadcast License Policy is best equipped to consider all that Sandlin has said, what it has said, when it has said it, how it has said it, and, most importantly, why it has said it, and to decide the matter accordingly. To the extent that Sandlin has also included its own version of engineering considerations, the Office of Broadcast License is also best equipped to deal with that.

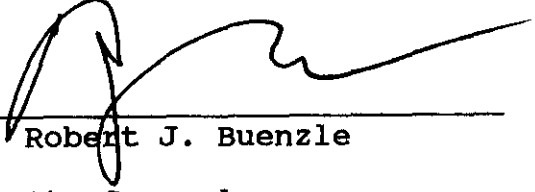
WHEREFORE, Garwood and Henderson submit that there is no merit in the Informal Complaint filed by Sandlin, that it is duplicative of arguments already raised by Sandlin in Docket 99-331, and that resolution of Sandlin's complaints, as well as Sandlin's own actions, by the Office of Broadcast License Policy

within its overall determination of Docket 99-331 would be the most reasonable and efficient way to proceed.

Respectfully submitted,

GARWOOD BROADCASTING COMPANY OF TEXAS

by



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June 25, 2002

* It is requested that all parties take note of the new address and phone number of Counsel for Garwood and Henderson.

EXHIBIT 1

FCC GRANT OF SANDLIN RULEMAKING PETITION 11-7-91